



DCJS

Office of Probation and Correctional Alternatives

The Fourth Anniversary of Leandra's Law: An Update on NY's Ignition Interlock Program

Presented at the
NYS Probation Officers Association
Annual Conference
Niagara Falls, New York
August 7, 2014



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“Leandra’s Law” in NYS

Chapter 496 of the Laws of 2009 - signed into law
November 18, 2009

First Effective Date--December 18, 2009—VTL §1192-2a (b)

- New Class E Felony Offense-Enhanced Penalties for Persons who Operate a Motor Vehicle while Intoxicated with a Child passenger under 16 years of age, with penalty of up to 4 years in state prison.



“Leandra’s Law” in NYS

Second Effective Date August 15, 2010– VTL §1192 (2), (2-a), or (3)

- Requires that persons convicted of having committed VTL Section 1192 misdemeanor or felony DWI crimes, on or after the date of enactment, (November 18, 2009) **and** sentenced on or after August 15, 2010; shall be sentenced to a period of probation or conditional discharge, in addition to any sentence of imprisonment or payment of any fine or penalty imposed, and that they ***be ordered to install an Ignition Interlock Device (IID) in any motor vehicle they “own or operate.”***
- The term of probation or conditional discharge shall run ***consecutive*** to any term of imprisonment.
- The IID condition appears on the NYS Driver’s License and the Driver’s License File.

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A2 Vs. A4 License Restrictions

The image displays two sample New York State Driver License forms side-by-side. The left form is for a 'PROBLEM DRIVER' with restriction code 'R: PROBLEM DRIVER' circled in red. The right form is for a driver with an 'IGNITION INTERLOCK' restriction, with 'R: A2' circled in red. Both forms include a photo of a woman, a signature, and personal information such as ID number, class, document type, address, date of birth, sex, eye color, hair color, height, and issue/expiration dates.

NEW YORK STATE
Commissioner of Motor Vehicles

DRIVER LICENSE
ID: 010 000 502 CLASS D

DOCUMENT: SAMPLE.LICENSE.II
1-1000 ANYPLACE AVE
ANYTOWN NY 12345
DOB: 06-09-85
SEX: F EYES: BR HT: 5-09
E: NONE
ISSUED: 01-04-13 EXPIRES: 06-09-21 SMPASA2002

NEW YORK STATE
Commissioner of Motor Vehicles

DRIVER LICENSE
ID: 010 000 503 CLASS D

DOCUMENT: SAMPLE.LICENSE.II
1-1000 ANYPLACE AVE
ANYTOWN NY 12345
DOB: 06-09-85
SEX: F EYES: BR HT: 5-09
E: NONE
ISSUED: 01-04-13 EXPIRES: 06-09-21 SMPASA2002

Chapter 169 of the Laws of 2013

On July 26, 2013, Governor Cuomo signed S5859/A02885-A into Law to strengthen Leandra's Law. This amended Chapter 496 of the Laws of 2009 and *took effect Friday, November 1, 2013*. The new law applies to those violations committed on or after November 1, 2013 and accomplishes the following:

- Extends the period of interlock restriction to a **minimum of 12 months** (from 6 months). Installation requirement shall terminate upon submission of proof from the offender that they had installed and maintained the device for at least six (6) months unless the court ordered a longer duration of installation.
- Authorizes the imposition of IIDs to be installed prior to sentencing as a preventive measure. The period of IID restriction will commence from the earlier of the **date of sentencing** or the **date an IID was installed in advance of sentencing**.

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Chapter 169 of the Laws of 2013

- Those defendants who claim he/she is not the owner of any motor vehicle and that he/she will not operate any motor vehicle during the period of interlock restriction must assert such under oath and on the court record.
- New language will **potentially subject an offender to additional charges** if he/she is found to have intentionally made a false statement to a court.
- "Owner" shall have the same meaning as provided in Vehicle and Traffic Law §128.

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Chapter 169 of the Laws of 2013

- Ensures that youth adjudicated as **Youthful Offenders** of DWI will be subject to Leandra's Law provisions, including the ignition interlock requirement.
- Expands upon the **Class E Felony**, Aggravated Unlicensed Operation 1st degree to capture operators who were given the benefit of a conditional license after a DWI and/or alcohol related offense and then drive impaired again.

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Ignition Interlock Forms

- DCJS/OPCA originally revised some IID forms in July of 2012 at the request of the judicial & monitoring communities.
- Due to the recent changes to Leandra's Law, DCJS continues to work with the NYS Office of Court Administration and Office of Justice Court Support (Town and Village Justice Resource Center) to update applicable IID forms (i.e., Pre-Sentence Installation Order & IID Order at Sentencing).
- Upon OCA finalizing and issuing the forms, they will be distributed by DCJS to Probation Directors/Commissioners and all Probation and CD Monitors.

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New York State Ignition Interlock Regulation Title 9 NYCRR, Part 358

- DCJS promulgated strict state regulations governing the timely installation and monitoring of compliance by persons ordered to install and maintain Ignition Interlock Devices.
- Part 358 outlines regulations as they relate to the responsibilities of *operators, manufacturers, installers, and monitors*.
- Judges play an important role in the enforcement of court-ordered probation and monitoring conditions.

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9 NYCRR Part 358 and Statutory “Unaffordability” Provisions of Law

- “Unaffordability” distinguished from Indigence
- **Financial Disclosure Report (DPCA-500IID-FDR)**
available (English/Spanish) at [http:
www.criminaljustice.ny.gov/opca/ignition.htm](http://www.criminaljustice.ny.gov/opca/ignition.htm)
 - Operator /Applicant required to complete/submit 3 copies to court
 - FDR Form captures offender’s income, assets and expenses, including monthly service for cell phone, cable/satellite television
 - **Progression of Cost Considerations by Judiciary :**
Affordability>>>> Payment Plan (partial payment)>>>>
Waiver Considerations (Waivers are not free)
 - IID Manufacturer agreements provide a maximum statewide rate of “unaffordability” of 10% before renegotiation is considered.

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Interlocks are Effective & Economical

- The cost of a cup of coffee: \$2/day
- One round trip bus fare: \$3/day
- The cost of a gallon of milk: \$3.50/day
- The cost of a pack of cigarettes: \$10/day

- **The cost of an ignition interlock: \$3/day**
- **The cost of saving a life: PRICELESS**

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NYS Ignition Interlock Program

- Monitoring & Offender Accountability –Touchstone of Effective Ignition Interlock Program:
 - Localities (Probation and Monitors) Perform Supervision and/or Monitoring
 - NYS Governor’s Traffic Safety Committee (GTSC) continues to provide nearly **\$3 million** in NHTSA funds to be distributed to localities based on number of convictions where an IID is ordered
 - Current Grant term: **October 1, 2013-September 30, 2014**
 - Includes Monitoring of operators who do not install IID’s

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Ignition Interlock Program Audit

In 2013, the DCJS Office of Internal Audit and Compliance reviewed the NY IID program, including OPCA's management of the program, as well as county probation departments and monitors who were reimbursed for the monitoring of offenders subject to an Ignition Interlock Device (IID) condition under Leandra's Law.

Process Included:

- Visits to ten counties where the IID Monitors were interviewed by Audit staff
- Review of a sample of cases in which IID's were ordered in the visited counties
- Assessment of program compliance with regulatory requirements
- Analysis of quarterly claims submitted during a contract year
- Interviews with OPCA Staff

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Reminders to Jurisdictions

- A particular case may only be claimed once, either at the time of IID order in advance of sentence, or IID order at sentence.
 - Intrastate transfer of a case does NOT qualify the receiving county to claim a case
 - If a case has been claimed in advance of sentencing, it cannot be again claimed at sentence
 - Re-sentence of a case (i.e. CD revoked and operator sentenced to probation) does NOT qualify a case to be claimed again
- Continue discussions with Courts to remind them of the importance of providing timely and accurate information to the probation/CD IID monitor in a timely manner. May include outreach to:
 - Administrative Judges
 - Magistrates Associations
 - Individual courts as necessary

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NY Ignition Interlock Device Classification System

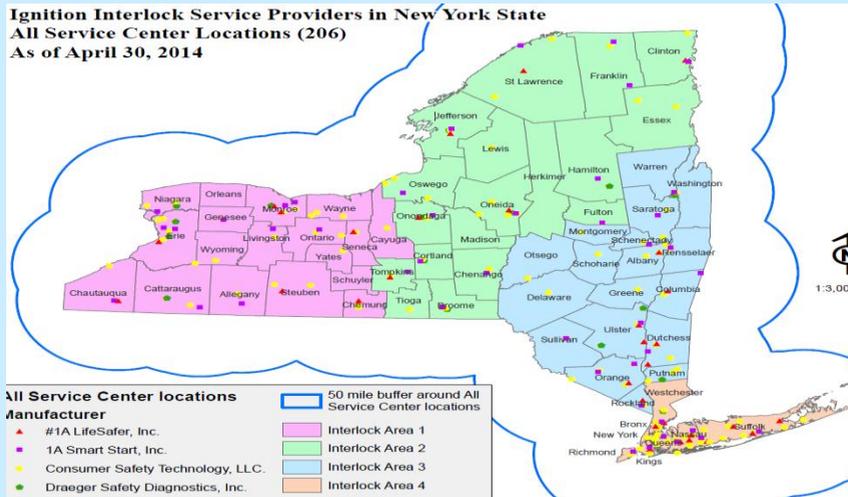
- For installations on or after November 1, 2013 a camera is a requirement of ALL Ignition Interlock Devices.
- IID Monitors should be responsive to manufacturers requests in terms of what new class of device, if any, is required by one's jurisdiction.



9 NYCRR Part 358

- Four Qualified Ignition Interlock Manufacturers to serve potential population of **26,000 DWI offenders**:
 - NYS *divided into four (4) regions* (consistent with COPA regions) to ensure that service is available in all localities.
 - Manufacturers must maintain network of installation service providers *within 50-miles of each operator*
 - State Regulations provide that operators may shop manufacturer (Model) but conditional discharge monitors will determine the Class of IID and probation will determine Class and Features.

9 NYCRR Part 358



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Quality Assurance

- Increasing utilization of IID's around the country, and increasing demands on IID technology (ie Real Time Reporting and Emergency Response Program) require vigilant monitoring of quality of services, functioning, and operations.
- Quality Assurance of Ignition Interlock Devices and Services are of critical importance due to the potential consequences that could occur due to the failure of such.
 - Threats to Highway and Public Safety
 - Loss of Confidence by Policy Makers and the Public
 - Scrutiny of IID products, services, and programs by the Media

IID Quality Assurance Standards

- NHTSA Standards
 - Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIDs)
 - Appendix A – Quality Assurance Template
- State Regulations and Required Certifications
- Contractual Requirements
 - Ensure that problems/issues are reported to all applicable jurisdictions per the specifications of any regulation/contracts which may apply.
 - Comply with Vendor Responsibility Requirements as required by jurisdictions.
 - <http://www.osc.state.ny.us/vendrep/index.htm>

Quality Assurance in New York

- NYS has taken several steps to promote the Quality Assurance of IID Manufacturers, and their devices and services.
 - Quarterly Manufacturers Conference Calls
 - Annual Manufacturers Conference
 - Annual Installer/Service Provider QA Audit
 - Standardized Format for Probation/CD monitors to report issues with manufacturers to OPCA as the regulatory office.
- NYS has utilized contractual and regulatory provisions as necessary to respond to QA and Vendor Responsibility issues which have arisen.

Annual Installation/Service Provider Audits/Reviews

- OPCA recently required manufacturer's conduct audits/reviews of 100% of its current installation/service providers.
- OPCA staff have reviewed all 200+ audits/reviews received back from manufacturers.
- OPCA to visit regional Installation/Service Providers as well as Probation Representatives/Monitors.

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Metrics--DWI Arrests in New York State

VTL Section 1192 Felony & Misdemeanor

Year	Felonies	Misdemeanors	Total
2010	7,050	47,474	54,524
2011	6,429	44,043	50,472
2012	6,200	42,637	48,837
2013	6,034	42,354	48,388

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NYS ALCOHOL-RELATED F&PI CRASHES AND FATALITIES

	2008	2009	2010	2011	2012	Prelim 2013
A-R F&PI Crashes	5,130	5,005	4,772	4,268	4,796	4,494
A-R Fatalities	381	361	354	362	358	379
<i>% of Total Fatalities</i>	31%	31%	30%	31%	31%	32%

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Leandra's Law Dispositions December 18, 2009 - June 23, 2014

- Class E Felony Arrests (VTL 1192 (2-a)(b))
Aggravated DWI with a Child under 16 years of age in the motor vehicle
- Arrests: 3,854
- Dispositions: 2,982
- Total Sentences: 2,848

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**Leandra's Law Sentences
Aggravated DWI with Child Cases
December 18, 2009-June 23, 2014**

Sentences:

Prison	118 (4.2%)
Local Jail	222 (7.9%)
Time Served	21 (0.7%)
Jail & Probation	567 (19.9%)
Probation	1299 (45.6%)
Fine	539 (18.9%)
Conditional Discharge	78 (2.7%)
Unconditional Discharge	4 (0.1%)
TOTAL SENTENCES	2,848 (100%)

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**Total Program Report
August 15, 2010 thru June 30, 2014**

County/Agency	# Orders Rec'd	IID Not Installed	Total % Not Installed	Installed by Class				Total Installed	Total % Installed	Payment Ordered			% Waived on Installed Only
				1	2	3	Full Payment			Payment Plan (Partial Payment)	Waived Payment	Total Payments	
Albany Probation	1,598	1,115	70%	95	67	321	483	30%	455	13	15	483	3%
Albany STOP-DWI	512	259	51%	0	0	253	253	49%	241	1	14	253	6%
Allegany Probation	228	160	70%	0	9	59	68	30%	52	6	10	68	15%
Broome Probation	431	374	87%	31	1	25	57	13%	51	3	3	57	5%
Broome District Att.	865	401	46%	463	1	0	464	54%	409	7	48	464	10%
Cattaraugus Probation	629	434	69%	2	27	166	195	31%	154	9	32	195	16%
Cayuga Probation	243	226	93%	1	0	16	17	7%	17	0	0	17	0%
Cayuga Counseling	195	97	50%	3	15	80	98	50%	97	0	1	98	1%
Chautauqua Probation	239	185	77%	1	9	44	54	23%	37	16	1	54	2%
Chautauqua Sheriff	427	320	75%	0	19	88	107	25%	106	1	0	107	0%
Chemung Probation	299	242	81%	0	5	52	57	19%	55	0	2	57	4%
Chemung STOP-DWI	639	406	64%	1	40	192	233	36%	226	2	5	233	2%
Chenango Probation	288	209	73%	38	15	26	79	27%	46	17	16	79	20%
Clinton Probation	783	566	72%	198	0	19	217	28%	124	48	45	217	21%
Columbia Probation	265	179	68%	69	0	17	86	32%	76	4	6	86	7%
Cortland Probation	353	239	68%	48	0	66	114	32%	91	12	11	114	10%
Delaware Probation	133	107	80%	9	2	15	26	20%	14	6	6	26	23%
Delaware Sheriff	35	17	49%	18	0	0	18	51%	13	0	5	18	28%
Dutchess Probation	757	667	88%	25	10	55	90	12%	86	0	4	90	4%
Dutchess DDP	1,100	573	52%	319	84	124	527	48%	521	0	6	527	1%

Total Program Report of IID Orders and Installations in NYS: August 15, 2010 thru March 31, 2014

- **68,234** ignition interlock orders were issued
- **18,625** interlocks installed (rate of 27.3%)

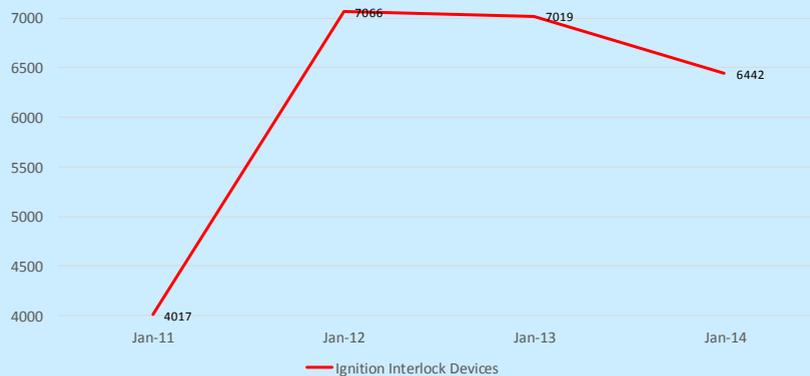
IID Fee Payments

- **89.9%** (16,749) of defendants were ordered to pay the full cost of the interlock
- **3.7%** (684) of defendants were ordered to make partial payment
- **6.4%** (1,192) of defendants were granted waivers

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Vendor Summary Report

Snapshot of IIDs Installed



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IID Negative Events/Failed Tests Report by County

IID Negative Event Counts by County January thru December 2013 Year								
NYS Local Jurisdiction	Missed Service Visit	Failed/Missed Start-up Re-test	Failed Start-up Re-test: BAC Range ≥ 0.08	Failed/Missed Rolling Re-test	Failed Rolling Re-test: BAC Range ≥ 0.08	Lock-outs Initiated	Vehicles Disabled	Attempted Circumvention or Tampering
	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD
Albany	246	538	153	135	13	399	50	11
Allegany	12	13	6	14	1	24	3	1
Bronx	79	251	78	121	11	176	14	6
Broome	30	180	38	52	2	159	14	85
Cattaraugus	56	203	51	92	3	130	25	4
Cayuga	7	67	9	21	0	57	1	0
Chautauqua	12	84	14	14	3	59	4	0
Chemung	19	231	43	24	0	181	18	1
Chenango	43	43	25	4	2	45	18	8
Clinton	19	61	23	31	0	57	6	2
Columbia	12	34	4	6	1	53	0	2
Cortland	87	79	58	29	2	80	12	2
Delaware	3	25	4	3	2	15	0	4
Dutchess	190	400	88	112	10	350	30	7

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Reports: IID Negative Events/Failed Tests by County & by IID Manufacturer

- OPCA works with NY's Qualified IID Manufacturers & DCJS' Office of Justice Research and Performance to produce two informative reports which relate directly to offender accountability.
- The data reflects the following events for 2013:
 - Missed Service Visits = **5,756**
 - Failed/Missed Start-up Re-tests = **17,286**
 - Failed Start-up Re-tests with BAC Range $\geq .08$ = **3,605**
 - Failed/Missed Rolling Re-tests = **4,972**
 - Failed Rolling Re-tests with BAC Range $\geq .08$ = **384**
 - Lock-outs Initiated = **12,962**
 - Vehicles Disabled = **1,427**
 - Attempted Circumvention or Tampering = **411**

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Ignition Interlock Annual Statistics

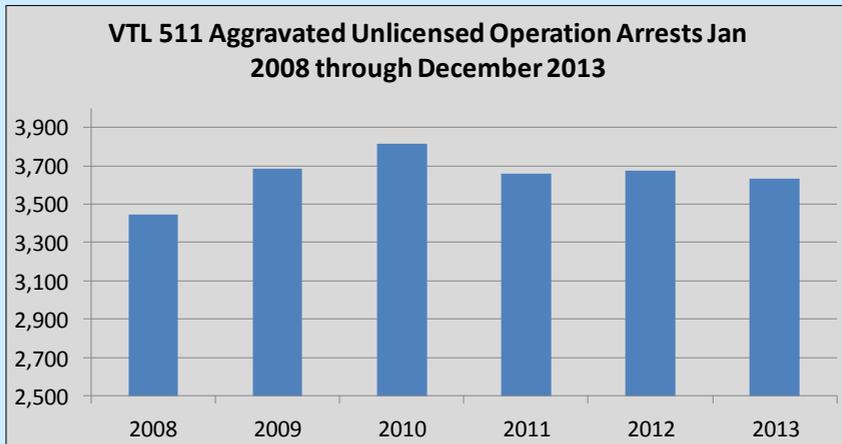
2010 - 2013

Year	# Orders Rec'd.	IID Not Installed	% Not Installed	# IID Installed by Class			IID Installed	% Installed	Payment Ordered			% Waived on Installed Only
				1	2	3			Full	Plan	Waive	
*2010	4,620	3,117	67.5%	561	1	939	1,501	32.5%	1,362	46	93	6.2%
2011	18,626	13,007	69.7%	1,625	34	3,964	5,623	30.2%	5,094	125	404	7.2%
2012	18,288	13,391	73.2%	1,287	22	3,586	4,895	26.8%	4,367	184	344	7.0%
2013	17,718	13,288	75.0%	1,216	459	2,755	4,430	25.0%	3,963	232	235	5.3%
TOTAL	59,252	42,803	72.1%	4,689	516	11,244	16,449	27.5%	14,786	587	1,076	6.5%

* Captures data from August 15, 2010 thru December 31, 2010

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Unlicensed Operators Will Continue To Drive.....



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IID County Contract Renewals: New Tasks & Performance Measures

Task:

All operators court ordered to have an IID installed pursuant to “Leandra’s Law” and/or its amendments *shall be registered in the New York State DMV License Event Notification System (LENS), or comparable system* for the duration of the period of Probation, Conditional Discharge, or the pre-sentence Ignition Interlock order, where the probation department or other monitoring agency is permitted access to LENS.

Performance Measure:

The number of operators court ordered to have an IID installed pursuant to such aforementioned laws who are registered in NYS’ DMV LENS, or comparable system by the applicable monitor each quarter.

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IID County Contract Renewals: New Tasks & Performance Measures

Task:

For all operators ordered to install an IID pursuant to Leandra’s Law, but who have not had such devices installed because of operator’s claim that they do not own or operate any vehicle(s), the applicable monitor will *make inquiries to NYS’ DMV at least once per quarter to ensure that no vehicles are registered or titled to such person.*

Performance Measure:

The number of operators ordered to install an IID pursuant to such aforementioned laws who have not had such devices installed, regarding whom the applicable monitor has made inquiries to the NYS DMV to ensure that no vehicles are registered or titled to such person during each quarter.

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IID County Contract Renewals: New Tasks & Performance Measures

Task:

For vehicles found *registered or titled* to those operators ordered to install an IID pursuant to Leandra's Law, but who have not had such device installed because of operator's claim that they do not own or operate any vehicle(s), the applicable monitor will notify the court and district attorney forthwith and consider instituting violation actions where appropriate.

Performance Measure:

The number of notifications made by the applicable monitor to courts and district attorneys regarding those operators with vehicles found registered or titled to them but who have not had an IID installed because of the operator's claim that they do not own or operate any vehicle(s).

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Quarterly Progress Reports

- Each grantee shall submit a quarterly **Progress Report** into the Grants Management System (**GMS**) which includes the new Task & Performance Measures to be completed. Progress Reports are **due 30 calendar days** after the close of each quarter and are due as follows:

Calendar Quarter

January 1 - March 31

April 1 - June 30

July 1 - September 30

October 1 - December 31

Report Due

April 30

July 30

October 30

January 30

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The Value of LENS in IID Monitoring

- Traffic tickets, and violations of VTL 1198 are not fingerprintable offenses. Hence, monitors do not receive “hit notices” from DCJS.

<http://www.criminaljustice.ny.gov/crimnet/ccman/ccman.htm>

- LENS does provide notification of tickets to Probation and DA staff, and notice of conviction to other public agency users, or subscribers.

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Preliminary Results of County Reporting on New Tasks

- First required reporting quarter was Jan – March 2014. 2 counties failed to submit their progress reports and of the other 57 submitted only 26 appear to have answered the performance measures correctly in relation to the specific tasks.
- In those 26 counties, 1575 people with an IID condition had a DMV registration check run and 103 (6.5%) of those came back with an active registration and were reported to the courts of jurisdiction.
- In one county there were 18 DMV registration checks run and 8 came back with an active registration that were reported to the court.

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Frequently Asked Questions

Q: Are Intrastate Transfers of Conditional Discharge Offenders w/IID condition under Leandra's Law required to be transferred out to the receiving county?

A: Yes. It is the regulatory intent of Part 358 that the monitoring of CD cases be transferred to the receiving county where an operator has received a sentence of a conditional discharge and resides in another county at the time of sentencing or thereafter.

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Frequently Asked Questions

Q: What VTL 1192 charges are not included in the Ignition Interlock Requirement under Leandra's Law?

A: VTL 1192.1 DWAI
VTL 1192.4 DWAI Drugs or
VTL 1192.4-a DWAI Drugs & Alcohol

PL§ 65.10 Conditions of probation and of conditional discharge:

- (k-1) Install and maintain a functioning ignition interlock device, as that term is defined in [section one hundred nineteen-a of the vehicle and traffic law](#), in any vehicle owned or operated by the defendant if the court in its discretion determines that such a condition is necessary to ensure the public safety. The court may require such condition ONLY where a person has been convicted of a violation of [subdivision two, two-a or three of section eleven hundred ninety-two of the vehicle and traffic law](#), or any crime defined by the vehicle and traffic law or this chapter of which an alcohol-related violation of any provision of [section eleven hundred ninety-two of the vehicle and traffic law](#) is an essential element. The offender shall be required to install and operate the ignition interlock device only in accordance with [section eleven hundred ninety-eight of the vehicle and traffic law](#).

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Frequently Asked Questions

Q: Under Leandra's Law the probation/CD term is consecutive to a term of imprisonment. When the jail time imposed is weekends (intermittent incarceration), does the probation/CD term start when the last weekend is served?

A: **NO.** There exists no statutory language applicable to intermittent sentences of imprisonment to establish that a probation or conditional discharge sentence runs consecutively to such an imprisonment sentence. **Thus, it would appear that PL§65.00(1) would govern which establishes that a period of probation or a period of conditional discharge “commences on the day it is imposed.**

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Probation/CD IID Orders Following Local/State Incarceration

- OPCA survey in August 2013 of IID monitors found 567 offenders being supervised and/or monitored on a probation or CD case post incarceration.
- July 2014 – DOCCS reports a potential of 663 offenders eligible for mandatory IID condition and monitoring via a probation or CD post incarceration.
- Recommended that IID monitoring staff enter the person to be monitored into the VINE system at the time of sentence.
- Parolees will be expected to install the IID within 10 days of their release from prison or return to court to attest under oath of their not owning or operating a vehicle.
- Essential Notifications:
 - To parolee of the need to report to the IID monitor
 - To the monitor & court submitting proof of install
 - To the Parole Officer on parolees adherence to IID requirements and any violations
- IID monitors need to receive the release addresses of the parolees to send notifications to and follow up.
- Parole and Probation Officer effective communication on these cases are crucial and OPCA is currently collaborating w/DOCCS to ensure such.

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*Overall Goal:
Effective Collaboration for the
Reduction of Alcohol Related Injuries &
Fatalities on New York's Roadways*



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